

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,) CR. NO. 3:98-1015
)
 v.) **ORDER**
)
 Jesse J. Floyd,)
)
 Defendant.)
)

This matter is before the court on Defendant's "Timely Notice of Preservation of *Booker/Blakely/Apprendi* Claim Requesting This Issue be Place in Abeyance and Considered by This Court Pursuant to Rule 60(b) When the Issue of Retroactive Application of *Booker* is Determined by the Court."¹ Defendant seeks to have this court maintain his "Notice" until such time as the United States Supreme Court decides whether *United States v. Booker*, 543 U.S. 220 (2005), is retroactively applicable.

Defendant has made no showing why relief should be granted to him under Fed. R. Civ. P. 60(b). Additionally, while the United States Supreme Court is the ultimate arbiter of whether *Booker* should be retroactively applicable, the Fourth Circuit Court of Appeals has recently held that *Booker* is not such a case. *See United States v. Morris*, 429 F.3d 65 (4th Cir. 2005).

This court **denies** Defendant's motion.

¹This case was originally assigned to the Honorable Dennis W. Shedd. Judge Shedd has since been elevated to the Fourth Circuit Court of Appeals. Post-Judgment matters have been reassigned to this court for disposition.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
January 17, 2006

C:\temp\notesB0AA3C\98-1015 USA v. Jesse J. Floyd e denying motion to hold in abeyance.wpd